

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MARTIN LUTHER KING, JR.
COUNTY; PIERCE COUNTY;
SNOHOMISH COUNTY; CITY AND
COUNTY OF SAN FRANCISCO;
COUNTY OF SANTA CLARA; CITY
OF BOSTON; CITY OF COLUMBUS;
and CITY OF NEW YORK,

Plaintiffs,

VS.

SCOTT TURNER in his official capacity as Secretary of the U.S. Department of Housing and Urban Development; the U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT; SEAN DUFFY in his official capacity as Secretary of the U.S. Department of Transportation; the U.S. DEPARTMENT OF TRANSPORTATION; MATTHEW WELBES in his official capacity as acting Director of the Federal Transit Administration; and the FEDERAL TRANSIT ADMINISTRATION.

Defendants.

No.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

I. INTRODUCTION

1. It is not the prerogative of the President “to make laws or a law of the United States” which would plainly “invade the domain of power expressly committed by the constitution exclusively to congress.” *Cunningham v. Neagle*, 135 U.S. 1, 83–84 (1890). Rather, it is the duty of the President, and, by extension, the executive branch agencies he administers, to “take care that the laws are faithfully executed.” U.S. Const. art. II, sec. 3. Among other things, this duty requires the executive branch to respect the powers granted to Congress and those reserved to the states, while carefully administering statutes enacted through the legislative process.

2. In authorizing federal grant dispersals, Congress exercised its spending power to establish permissible conditions that agencies may impose on a grant award. Absent a statute, an agency lacks authority to impose grant conditions beyond what Congress has authorized, and such “conditions are ultra vires.” *City of Los Angeles v. Barr*, 941 F.3d 931, 945 (9th Cir. 2019). In short, an agency’s power to condition grants is wholly dependent on the existence of statutory authority. *City & Cnty. of San Francisco v. Barr*, 965 F.3d 753, 766 (9th Cir. 2020).

3. Moreover, Congress's power to attach conditions to federal grants is constrained by the Constitution. *South Dakota v. Dole*, 483 U.S. 203, 207–08, 211 (1987). The Executive's power to attach conditions to federal grants thus is further restricted by the limits of congressional power.

4. Here, the U.S. Department of Housing and Urban Development (HUD) and the U.S. Department of Transportation (DOT), through the Federal Transit Administration (FTA), seek to impose conditions on funding provided through congressionally authorized federal grant programs to coerce grant recipients that rely on federal funds into implementing President

1 Trump's policy agenda, and direct them to adopt his legal positions contrary to settled law. By
 2 unilaterally imposing funding conditions Congress has not authorized and that even Congress
 3 could not constitutionally enact, Defendants usurp Congress's power of the purse. These
 4 conditions bear little or no connection to the purposes of the grant programs Congress
 5 established. They also contravene bedrock separation of powers principles and violate numerous
 6 other constitutional and statutory protections, including (among others) the Tenth Amendment's
 7 anti-commandeering principle, and the Fifth Amendment's void-for-vagueness doctrine, as well
 8 as the Administrative Procedure Act (APA).

10 5. In sum, Defendants' unlawful attempts to repurpose federal grant programs
 11 established by Congress harm Plaintiffs by threatening already-awarded and soon to be awarded
 12 funds they need to support critical programs and services for their residents, including permanent
 13 and transitional housing, and other forms of assistance. Allowing the unlawful grant conditions
 14 to stand would negatively impact Plaintiffs' committed budgets, force reductions in their
 15 workforce, and undermine their ability to determine for themselves how to meet their
 16 communities' unique needs. As such, Plaintiffs seek an order declaring the HUD and FTA grant
 17 conditions at issue unlawful, void, and unenforceable and enjoining their imposition and
 18 enforcement.

20 II. JURISDICTION AND VENUE

21 6. The Court has jurisdiction under 28 U.S.C. §§ 1331 and 1346. This Court has
 22 further remedial authority under the Declaratory Judgment Act, 28 U.S.C. §§ 2201(a) and 2202
 23 *et seq.*

25 7. Venue properly lies within the Western District of Washington because this is an
 26 action against an officer or employee of the United States and an agency of the United States,
 27

1 there are Plaintiffs residing in this judicial district, and a substantial part of the events or
 2 omissions giving rise to this action occurred in this district. 28 U.S.C. § 1391(e)(1).

3 III. PARTIES

4 8. Plaintiff Martin Luther King, Jr. County (“King County”) is a home rule charter
 5 county organized and existing under and by virtue of the constitution and laws of the State of
 6 Washington. As described further below, King County relies on nearly \$67 million each year in
 7 HUD Continuum of Care (CoC) grant funds to serve its homeless residents, who numbered
 8 almost 17,000 during a recent count. Additionally, King County relies substantial federal
 9 grants—including over \$446 million in appropriated FTA grants—to provide critical transit
 10 services and improvements for the benefit of King County residents. King County brings the
 11 action as to the unlawful CoC Funding Conditions and FTA Funding Conditions, as further
 12 defined below.

13 9. Plaintiff Pierce County is a home rule charter county organized and existing under
 14 and by virtue of the constitution and laws of the State of Washington. Pierce County relies on
 15 just over \$4.9 million annually (as of 2025) in CoC funds to support permanent supportive
 16 housing and rapid rehousing projects for individuals and families experiencing homelessness
 17 throughout the county. Pierce County brings the action only as to the unlawful CoC Funding
 18 Conditions.

19 10. Plaintiff Snohomish County is a home rule charter county organized and existing
 20 under and by virtue of the constitution and laws of the state of Washington. Snohomish County
 21 relies on nearly \$16.7 million each year in CoC grant funds to serve its homeless residents.
 22 Snohomish County brings the action only as to the unlawful CoC Funding Conditions.

23 11. Plaintiff City and County of San Francisco (“San Francisco”) is a municipal

1 corporation organized and existing under and by virtue of the laws of the State of California. San
 2 Francisco relies on approximately \$50 million each year in HUD grant funds to serve its
 3 homeless residents, who numbered 8,323 during the most recent count. San Francisco brings the
 4 action only as to the unlawful CoC Funding Conditions.

5 12. Plaintiff County of Santa Clara (“Santa Clara”) is a charter county and political
 6 subdivision of the State of California. Santa Clara administers more than \$34 million each year
 7 in HUD grant funds to serve the region’s approximately 10,000 homeless residents. Santa Clara
 8 brings the action only as to the unlawful CoC Funding Conditions.

9 13. Plaintiff City of Boston (“Boston”) is a municipal corporation organized under the
 10 laws of the Commonwealth of Massachusetts. Boston relies on nearly \$48 million annually in
 11 CoC grant funds to house and stabilize residents exiting homelessness. Boston brings the action
 12 only as to the unlawful CoC Funding Conditions.

13 14. Plaintiff City of Columbus (“Columbus”) is a municipal corporation organized
 14 under Ohio law, *see* Ohio Const. art. XVIII. It is the capital of Ohio, its largest city, and the
 15 fourteenth largest city in the United States, with a population of over 905,000 according to the
 16 2020 Census and an unhoused population of over 2,500. Columbus relies upon approximately \$1
 17 million per year of HUD grant funds from the ESG and HOME programs which are passed
 18 through to the county’s Community Shelter Board in order to provide crucial services to the
 19 city’s and county’s homeless residents. Columbus also provides \$10 million annually to the
 20 Community Shelter Board from its general revenue fund. Columbus brings the action only as to
 21 the unlawful CoC Funding Conditions.

22 15. Plaintiff City of New York (“NYC”) is a municipal corporation organized and
 23 existing under the laws of the State of New York. NYC, through its Department of Housing
 24

1 Preservation and Development, receives approximately \$53 million in CoC funds to provide
 2 rental assistance for chronically homeless households to reside in permanent supportive housing.
 3 As the collaborative applicant and Homeless Management Information System lead agency for
 4 the New York City Continuum of Care (“NYC CoC”), NYC through its Department of Social
 5 Services receives an additional approximately \$6 million in grants to provide technical and
 6 administrative support to all of the programs in the NYC CoC. NYC brings the action only as to
 7 the unlawful CoC Funding Conditions.

9 16. Defendant Scott Turner is the Secretary of HUD, the highest ranking official in
 10 HUD, and responsible for the decisions of HUD. He is sued in his official capacity.

11 17. Defendant HUD is an executive department of the United States federal
 12 government. 42 U.S.C. § 3532(a). HUD is an “agency” within the meaning of the APA. 5 U.S.C.
 13 § 551(1).

15 18. Defendant Sean Duffy is the Secretary of DOT, the highest ranking official in
 16 DOT, and responsible for the decisions of DOT. He is sued in his official capacity.

17 19. Defendant DOT is an executive department of the United States federal
 18 government. 49 U.S.C. § 102(a). It houses a number of operating administrations, including the
 19 FTA. DOT is an “agency” within the meaning of the APA. 5 U.S.C. § 551(1).

21 20. Defendant Matthew Welbes is the acting Administrator of the FTA, the highest
 22 ranking official in the FTA, and responsible for the decisions of the FTA. He is sued in his
 23 official capacity.

24 21. Defendant FTA is an operating administration within DOT. 49 U.S.C. § 107(a).
 25 FTA is an “agency” within the meaning of the APA. 5 U.S.C. § 551(1).

IV. FACTUAL ALLEGATIONS

A. Continuum of Care Funding

1. Congress Authorizes the Establishment of the Continuum of Care Program through the McKinney-Vento Homeless Assistance Act

22. Congress enacted the McKinney-Vento Homeless Assistance Act (the “Homeless Assistance Act”) “to meet the critically urgent needs of the homeless of the Nation” and “to assist the homeless, with special emphasis on elderly persons, handicapped persons, families with children, Native Americans, and veterans.” 42 U.S.C. § 11301(b).

23. Among the programs Congress established through subsequent amendments to the Homeless Assistance Act is the Continuum of Care (CoC) program. *Id.* §§ 11381–89. The CoC program is designed to promote a community-wide commitment to the goal of ending homelessness; to provide funding for efforts by nonprofit providers and state and local governments to quickly rehouse homeless individuals and families; to promote access to, and effective utilization of, mainstream programs by homeless individuals and families; and to optimize self-sufficiency among those experiencing homelessness. *Id.* § 11381.

24. The Homeless Assistance Act directs the Secretary of HUD (the “HUD Secretary”) to award CoC grants on a competitive basis using statutorily prescribed selection criteria. *Id.* § 11382(a). These grants fund critical homelessness services administered by grant recipients either directly or through service providers contracted by the grant recipient. The CoC program funds a variety of programs that support homeless individuals and families, including through the construction of new shelters and supportive housing, rehousing support, rental assistance, child care, job training, healthcare, mental health services, trauma counseling, and life skills training. *Id.* §§ 11360(29), 11383.

25. Grants are awarded to local coalitions, or “Continuums,” that may include

1 representatives from local governments, nonprofits, faith-based organizations, advocacy groups,
 2 public housing agencies, universities, and other stakeholders. 24 C.F.R. § 578.3. Each
 3 Continuum designates an applicant to apply for CoC funding on behalf of the Continuum. *Id.*
 4

5 **2. Congress Imposes Legislative Directives, and HUD Promulgates
 6 Rules, Regarding CoC Funding Conditions**

7 26. HUD's administration of the CoC program, including the award of CoC grants, is
 8 authorized and governed by statutory directives. Congress has specified what activities are
 9 eligible for funding under the CoC program, the selection criteria HUD must apply in awarding
 10 CoC grants, and program requirements HUD can require recipients agree to as conditions for
 11 receiving funds. *See* 42 U.S.C. §§ 11383, 11386, 11386a.

12 27. Section 422 of the Homeless Assistance Act, 42 U.S.C. § 11382, contains
 13 Congress's overarching authorization for HUD to award CoC grants. Subsection (A) of that
 14 section states:

15 The Secretary shall award grants, on a competitive basis, and using
 16 the selection criteria described in section 11386a of this title, to carry
 17 out eligible activities under this part for projects that meet the
 18 program requirements under section 11386 of this title, either by
 19 directly awarding funds to project sponsors or by awarding funds to
 20 unified funding agencies.

21 28. Section 427 of the Homeless Assistance Act, 42 U.S.C. § 11386a, provides for the
 22 HUD Secretary to establish selection criteria to evaluate grant applications and sets forth specific
 23 criteria the HUD Secretary must use. These required criteria include things like the recipient's
 24 previous performance in addressing homelessness, whether the recipient has demonstrated
 25 coordination with other public and private entities serving homeless individuals, and the need
 26 within the geographic area for homeless services. *Id.* (b)(1)–(2).

27 29. Section 426 of the Homeless Assistance Act, 42 U.S.C. § 11386, sets forth

1 “[r]equired agreements” to which grant recipients must adhere. Recipients must agree to, among
 2 other things, “monitor and report to the [HUD] Secretary the progress of the project,” “take the
 3 educational needs of children into account when families are placed in emergency or transitional
 4 shelter,” “place families with children as close as possible to their school of origin,” and obtain
 5 various certifications from direct service providers. 42 U.S.C. § 11386(b).

7 30. The Homeless Assistance Act does not authorize HUD to condition CoC funding
 8 on opposition to all forms of Diversity, Equity, and Inclusion (DEI) policies and initiatives
 9 through the guise of federal anti-discrimination law, nor on participating in aggressive and
 10 lawless immigration enforcement, exclusion of transgender people, or cutting off access to
 11 information about lawful abortions.

12 31. Congress has authorized the Secretary to promulgate regulations establishing,
 13 *inter alia*, other selection criteria and “other terms and conditions” on grant funding “to carry out
 14 [the CoC program] in an effective and efficient manner.” *Id.* §§ 11386(b)(8), 11386a(b)(1)(G),
 15 11387.

17 32. Pursuant to this authority, HUD has promulgated the Continuum of Care Program
 18 rule at 24 C.F.R. part 578 (the “Rule”), which, among other things, sets forth additional
 19 conditions to which grant recipients must agree in the CoC grant agreements they execute with
 20 HUD. *Id.* § 578.23(c). While the Rule permits HUD to require CoC recipients to comply with
 21 additional “terms and conditions,” such terms and conditions must be “establish[ed] by” a Notice
 22 of Funding Opportunity (NOFO).¹ *Id.* § 578.23(c)(12).

24 33. The Rule does not impose any conditions on CoC funding related to prohibiting
 25
 26

¹ The terms NOFO, “Notice of Funding Availability,” and “Funding Opportunity Announcement” refer to a formal announcement of the availability of federal funding. As part of an effort to standardize terminology, most federal agencies now use the term NOFO. For clarity, this Complaint uses the term NOFO.

1 all kinds of DEI, facilitating enforcement of federal immigration laws, verification of
 2 immigration status, or prohibiting the “promot[ion]” of “gender ideology” or “elective abortion.”
 3 Congress has not delegated authority that would permit an agency to adopt such conditions.
 4

5 **3. Congress Appropriates CoC Funding and Authorizes HUD to Issue a
 NOFO for Fiscal Years 2024 and 2025**

6 34. Funding for CoC grants comes from congressional discretionary appropriations.

7 35. Most recently, Congress appropriated funds for the CoC program in the
 8 Consolidated Appropriations Act, 2024, Pub. L. 118-42, 138 Stat. 25 (the “2024 Appropriations
 9 Act”).
 10

11 36. The 2024 Appropriations Act contains additional directives to HUD regarding
 12 CoC funding. For instance, it requires the Secretary to “prioritize funding . . . to continuums of
 13 care that have demonstrated a capacity to reallocate funding from lower performing projects to
 14 higher performing projects,” and requires the Secretary to “provide incentives to create projects
 15 that coordinate with housing providers and healthcare organizations to provide permanent
 16 supportive housing and rapid re-housing services.” *Id.*, 138 Stat. 362–363.
 17

18 37. The 2024 Appropriations Act also authorized HUD to issue a two-year NOFO for
 19 Fiscal Years 2024 and 2025 program funding. *Id.*, 138 Stat. 386.
 20

21 38. By statute, the HUD Secretary must announce recipients within five months after
 22 the submission of applications for funding in response to the NOFO. 42 U.S.C. § 11382(c)(2).
 23

24 39. The HUD Secretary’s announcement is a “conditional award,” in that the recipient
 25 must meet “all requirements for the obligation of those funds, including site control, matching
 26 funds, and environmental review requirements.” *Id.* § 11382(d)(1)(A).
 27

28 40. Once the recipient meets those requirements, HUD must obligate the funds within
 29 45 days. *Id.* § 11382(d)(2) (providing that “the Secretary shall obligate the funds”).
 30

1 41. None of the 2024 Appropriations Act’s directives to HUD or any other legislation
 2 authorize HUD to impose CoC grant fund conditions related to prohibiting all kinds of DEI,
 3 facilitating enforcement of federal immigration laws, verification of immigration status, or
 4 prohibiting the “promot[ion]” of “gender ideology” or “elective abortion.”

5 **4. HUD Conditionally Awards CoC Funds to Plaintiffs**

6 42. In January 2024, HUD posted a biennial NOFO announcing a competition for
 7 CoC funding for Fiscal Years 2024 and 2025 (the “FYs 2024 & 2025 NOFO”). *See* U.S. Dep’t of
 8 Housing & Urban Dev., Notice of Funding Opportunity for FY 2024 and FY 2025 Continuum of
 9 Care Competition and Renewal or Replacement of Youth Homeless Demonstration Program
 10 (Jul. 24, 2024),

11 https://www.hud.gov/sites/dfiles/CPD/documents/FY2024_FY2025_CoC_and_YHDP_NOFO_F_R-6800-N-25.pdf.

12 43. The FYs 2024 & 2025 NOFO directed Continuums to consider policy priorities in
 13 their applications, including “Racial Equity” and “Improving Assistance to LGBTQ+
 14 Individuals.” *Id.* at 9. The FYs 2024 & 2025 NOFO specified that “HUD is emphasizing system
 15 and program changes to address racial equity within CoCs and projects. Responses to preventing
 16 and ending homelessness should address racial inequities” *Id.* The FYs 2024 & 2025 NOFO
 17 further specified that “CoC should address the needs of LGBTQ+, transgender, gender non-
 18 conforming, and non-binary individuals and families in their planning processes. Additionally,
 19 when considering which projects to select in their local competition to be included in their
 20 application to HUD, CoCs should ensure that all projects provide privacy, respect, safety, and
 21 access regardless of gender identity or sexual orientation.” *Id.*

22 44. The NOFO did not include any grant funding conditions related to prohibiting all

kinds of DEI, facilitating enforcement of federal immigration laws, verifying immigration status, or prohibiting the “promot[ion]” of “gender ideology” or “elective abortion.”

45. Each of the Plaintiffs, in coordination with its Continuum, developed its applications in compliance with the FYs 2024 & 2025 NOFO's stated policy priorities. Each Plaintiff Continuum timely submitted its application in response to the FYs 2024 & 2025 NOFO.

46. On January 17, 2025, HUD announced the conditional award list for FY 2024, which included each of the Plaintiffs.

5. Plaintiffs Rely on CoC Grants to Serve their Homeless Residents

47. Tens of thousands of individuals and families experiencing homelessness live within Plaintiffs' geographical limits. Many of these individuals rely on services provided by Plaintiffs with funding from the CoC program to access rapid rehousing (which provides short-term rental assistance), permanent and transitional housing services, and case management that supports linkages to healthcare, job training, and other resources that facilitate their ability to obtain and keep their housing.

48. Plaintiffs historically have applied annually for CoC funds on behalf of Continuums that include representatives from local governments, nonprofits, faith-based organizations, advocacy groups, public housing agencies, universities, and/or other stakeholders. Grant awards are currently distributed to scores of programs serving homeless individuals and families in each of Plaintiffs' jurisdictions.

49. CoC grants support permanent supportive housing programs, which provide long-term, affordable housing combined with supportive services for individuals and families experiencing, or at risk of, homelessness. These programs allow participating individuals and families to live independently and stably in their communities.

1 50. CoC grants also support rapid rehousing programs, which help individuals and
2 families exit homelessness and return quickly to permanent housing. Rapid rehousing is a key
3 component of Plaintiffs' response to homelessness because it connects people to housing as
4 quickly as possible by providing temporary financial assistance and other supportive services
5 like housing search and stability case management.

7 51. Other programs funded by CoC grants include transitional housing programs that
8 provide temporary, short-term housing for homeless individuals and families who require a
9 bridge to permanent housing; supportive services, which include things like conducting outreach
10 to homeless individuals and families and providing referrals to housing or other needed
11 resources; and operation of systems for collecting and managing data on the provision of housing
12 and services to program participants.

14 52. Thousands of Plaintiffs' residents experiencing, or at risk of, homelessness rely
15 on these programs and others funded by the CoC program. The loss of CoC funding threatens the
16 ability of Plaintiffs to provide critical programs and would result in program participants losing
17 their housing and being unable to access services they have relied on to achieve and maintain
18 stability and independence.

19 53. For FY 2024, HUD conditionally awarded Plaintiffs a total of over \$280 million
20 in CoC grants to continue homelessness assistance programs, ensuring Plaintiffs' ability to serve
21 their residents so they would not experience a sudden drop off in the availability of housing
22 services, permanent and transitional housing, and other assistance.

24 54. In reliance on these awards, many Plaintiffs have already notified service
25 providers of forthcoming funding and/or contracted with service providers for homelessness
26 assistance services.

1 **B. Federal Transit Administration Funding**

2 55. Congress has established by statute a wide variety of grant programs administered
 3 by the Federal Transit Administration (FTA) that provide federal funds to state and local
 4 governments for public transit services. These include programs codified in title 49, chapter 53
 5 of the U.S. Code, as amended by the Fixing America's Surface Transportation (FAST) Act of
 6 2015, Pub. L. 114-94, 129 Stat. 1312, and the Infrastructure Investment and Jobs Act of 2021,
 7 Pub. L. 117-58, 135 Stat. 429.

8 56. For instance, section 5307 authorizes the Secretary of Transportation to make
 9 urbanized area formula grants ("UA Formula Grants"), which go toward funding the operating
 10 costs of public transit facilities and equipment in urban areas, as well as certain capital, planning,
 11 and other transit-related projects. *See* 49 U.S.C. § 5307(a)(1). Section 5307 imposes specific
 12 requirements on UA Formula Grant recipients related to the recipient's operation and control of
 13 public transit systems. *See id.* § 5307(c). None of these requirements pertain to a prohibition on
 14 all kinds of DEI or facilitating enforcement of federal immigration laws.

15 57. Section 5309 establishes certain fixed guideway capital investment grants ("Fixed
 16 Guideway Grants"). *See* 49 U.S.C. § 5309(b). This program funds certain state and local
 17 government projects that develop and improve "fixed guideway" systems—meaning public
 18 transit systems that operate on a fixed right-of-way, such as rail, passenger ferry, or bus rapid
 19 transit systems. *Id.* §§ 5302(8), 5309(b). Section 5309 imposes specific requirements on Fixed
 20 Guideway Grant recipients related to, for example, the recipient's capacity to carry out the
 21 project, maintain its equipment and facilities, and achieve budget, cost, and ridership outcomes.
 22 *See id.* § 5309(c). None of these requirements pertain to a prohibition on all kinds of DEI or
 23 facilitating enforcement of federal immigration laws.

1 58. Section 5337 authorizes grants to fund state and local government capital projects
 2 that maintain public transit systems in a state of good repair, as well as competitive grants for
 3 replacement of rail rolling stock (“Repair Grants”). *See* 49 U.S.C. § 5337(b), (f). Section 5337
 4 specifically limits what projects may be eligible for Repair Grants, *id.* § 5337(b), and imposes
 5 specific requirements on multi-year agreements for competitive rail vehicle replacement grants,
 6 *id.* § 5337(f)(7). It does not, however, impose any conditions on Repair Grants related to a
 7 prohibition on all kinds of DEI or facilitating enforcement of federal immigration laws.

9 59. Section 5339 authorizes grants to fund the purchase and maintenance of buses and
 10 bus facilities (“Bus Grants”). *See* 49 U.S.C. § 5339(a)(2), (b), (c). The Bus Grant program
 11 incorporates the specific funding requirements set forth in section 5307 for UA Formula Grants
 12 and imposes other requirements on Bus Grant recipients. *See id.* § 5339(a)(3), (7), (b)(6), (c)(3).
 13 Section 5339 does not, however, impose any conditions on Bus Grants related to a prohibition on
 14 all kinds of DEI or local participation in enforcement of federal immigration laws.

16 60. Since at least 2021, Congress has annually appropriated funding for FTA-
 17 administered grant programs, including the four identified above (collectively, the “FTA
 18 Grants”). And in the annual appropriations legislation, Congress has set forth priorities and
 19 directives to the Secretary of DOT (the “DOT Secretary”) with respect to transportation funding,
 20 but it has never imposed or authorized directives for or conditions on FTA Grants related to a
 21 prohibition on DEI or local participation in federal immigration enforcement. *See* Consolidated
 22 Appropriations Act, 2021, Pub. L. 116-260, 134 Stat. 1182, 1854; Consolidated Appropriations
 23 Act, 2022, Pub. L. 117-103, 136 Stat. 716, 724; Consolidated Appropriations Act, 2023, Pub. L.
 24 117-328, 136 Stat. 5129, 5138; Consolidated Appropriations Act, 2024, Pub. L. 118-42, 138 Stat.
 25 334, 342.

61. Plaintiff King County operates public transit eligible for FTA Grants. King County currently has more than \$446 million in appropriated federal funds from FTA grant programs for transit services and improvements provided or undertaken for the benefit of its residents.

C. Following President Trump’s Inauguration, Defendants Unilaterally Impose New Conditions on CoC and FTA Funding

1. President Trump Issues Executive Orders Directing Federal Agencies to Impose New Conditions on Federal Grants

62. Since taking office, President Trump has issued numerous executive orders purporting to direct the heads of executive agencies to impose conditions on federal funding that bear little or no connection to the purposes of the grant programs Congress established, lack statutory authorization, and conflict with the law as interpreted by the courts. Instead, the conditions appear to require federal grant recipients to agree to promote the political agenda President Trump campaigned on during his run for office and has continued espousing since, including opposition to all forms of DEI policies and initiatives, participation in aggressive and lawless immigration enforcement, exclusion of transgender people, and cutting off access to lawful abortions. These unlawful conditions are imposed to direct and coerce grant recipients to comply with the President's policy agenda.

63. The “Ending Illegal Discrimination and Restoring Merit-Based Opportunity” executive order directs each federal agency head to include “in every contract or grant award” a term that the contractor or grant recipient “certify that it does not operate any programs promoting DEI” that would violate federal antidiscrimination laws. Exec. Order 14173 § 3(b)(iv)(B), 90 Fed. Reg. 8633 (Jan. 21, 2025) (the “DEI Order”). The certification is not limited to programs funded with federal grants. *Id.* § 3(b)(iv).

1 64. The DEI Order also directs each agency head to include a term requiring the
 2 contractor or grant recipient to agree that its compliance “in all respects” with all applicable
 3 federal nondiscrimination laws is “material to the government’s payment decisions” for purposes
 4 of the False Claims Act (FCA), 31 U.S.C. §§ 3729 et seq. *Id.* § 3(b)(iv)(A). The FCA imposes
 5 liability on “any person” who “knowingly presents, or causes to be presented, a false or
 6 fraudulent claim for payment or approval.” 31 U.S.C. § 3729(a)(1)(A). For FCA liability to
 7 attach, the alleged misrepresentation must be “material to the Government’s payment
 8 decision”—an element the U.S. Supreme Court has called “demanding.” *Universal Health*
 9 *Servs., Inc. v. United States ex rel. Escobar*, 579 U.S. 176, 192, 194 (2016). Each violation of the
 10 FCA is punishable by a civil penalty of up to \$27,894 today—plus mandatory treble damages
 11 sustained by the federal government because of that violation. 31 U.S.C. § 3729(a); 28 C.F.R. §
 12 85.5(a). Given the demands of proving materiality and the severity of penalties imposed by the
 13 FCA, the certification term represents another effort to coerce compliance with the President’s
 14 policies by effectively forcing grant recipients to concede an essential element of an FCA claim.
 15

16 65. The DEI Order does not define the term “DEI.” As explained below, subsequent
 17 executive agency memoranda and letters make clear that the Trump administration’s conception
 18 of what federal antidiscrimination law requires, including what constitutes a purportedly “illegal”
 19 DEI program, is inconsistent with the requirements of federal nondiscrimination statutes as
 20 interpreted by the courts.
 21

22 66. The “Ending Taxpayer Subsidization of Open Borders” executive order directs all
 23 agency heads to ensure “that Federal payments to States and localities do not, by design or effect,
 24 facilitate the subsidization or promotion of illegal immigration, or abet so-called ‘sanctuary’
 25 policies that seek to shield illegal aliens from deportation.” Executive Order 14218 § 2(ii), 90
 26

1 Fed. Reg. 10581 (Feb. 19, 2025) (the “Immigration Order”).

2 67. The Immigration Order also purports to implement the Personal Responsibility
 3 and Work Opportunity Reconciliation Act (PRWORA), pursuant to which certain federal
 4 benefits are limited to individuals with qualifying immigration status. *See* 8 U.S.C. § 1611(a). In
 5 particular, the Immigration Order directs all agency heads to “identify all federally funded
 6 programs administered by the agency that currently permit illegal aliens to obtain any cash or
 7 non-cash public benefit” and “take all appropriate actions to align such programs with the
 8 purposes of this order and the requirements of applicable Federal law, including . . . PRWORA.”

9 *Id.* § 2(i).

10 68. On April 28, 2025, President Trump issued additional executive orders related to
 11 immigration and law enforcement. The “Protecting American Communities from Criminal
 12 Aliens” executive order states that “some State and local officials . . . continue to use their
 13 authority to violate, obstruct, and defy the enforcement of Federal immigration laws” and directs
 14 the Attorney General in coordination with the Secretary of Homeland Security to identify
 15 “sanctuary jurisdictions,” take steps to withhold federal funding from such places, and develop
 16 “mechanisms to ensure appropriate eligibility verification is conducted for individuals receiving
 17 Federal public benefits . . . from private entities in a sanctuary jurisdiction, whether such
 18 verification is conducted by the private entity or by a governmental entity on its behalf.”

19 [https://www.whitehouse.gov/presidential-actions/2025/04/protecting-american-communities-](https://www.whitehouse.gov/presidential-actions/2025/04/protecting-american-communities-from-criminal-aliens/)
 20 from-criminal-aliens/. The “Strengthening and Unleashing America’s Law Enforcement to
 21 Pursue Criminals and Protect Innocent Citizens” executive order directs the Attorney General to,
 22 among other things, “prioritize prosecution of any applicable violations of Federal criminal law
 23 with respect to State and local jurisdictions” whose officials “willfully and unlawfully direct the
 24

1 obstruction of criminal law, including by directly and unlawfully prohibiting law enforcement
 2 officers from carrying out duties necessary for public safety and law enforcement” or
 3 “unlawfully engage in discrimination or civil-rights violations under the guise of “diversity,
 4 equity, and inclusion” initiatives that restrict law enforcement activity or endanger citizens.”
 5
[https://www.whitehouse.gov/presidential-actions/2025/04/strengthening-and-unleashing-](https://www.whitehouse.gov/presidential-actions/2025/04/strengthening-and-unleashing-americas-law-enforcement-to-pursue-criminals-and-protect-innocent-citizens/)
 6 [americas-law-enforcement-to-pursue-criminals-and-protect-innocent-citizens/](https://www.whitehouse.gov/presidential-actions/2025/04/strengthening-and-unleashing-americas-law-enforcement-to-pursue-criminals-and-protect-innocent-citizens/).

8 69. The “Defending Women from Gender Ideology Extremism and Restoring
 9 Biological Truth to the Federal Government” executive order directs agency heads to “take all
 10 necessary steps, as permitted by law, to end the Federal funding of gender ideology” and “assess
 11 grant conditions and grantee preferences” to “ensure grant funds do not promote gender
 12 ideology.” Exec. Order No. 14168 § 3(e), (g), 90 Fed. Reg. 8615 (Jan. 20, 2025) (the “Gender
 13 Ideology Order”). The Gender Ideology Order states that “[g]ender ideology’ replaces the
 14 biological category of sex with an ever-shifting concept of self-assessed gender identity,
 15 permitting the false claim that males can identify as and thus become women and vice versa, and
 16 requiring all institutions of society to regard this false claim as true.” *Id.* § 2(f). It goes on to state
 17 that “[g]ender ideology includes the idea that there is a vast spectrum of genders that are
 18 disconnected from one’s sex” and is therefore “internally inconsistent, in that it diminishes sex as
 19 an identifiable or useful category but nevertheless maintains that it is possible for a person to be
 20 born in the wrong sexed body.” *Id.*

23 70. The “Enforcing the Hyde Amendment” executive order declares it the policy of
 24 the United States “to end the forced use of Federal taxpayer dollars to fund or promote elective
 25 abortion.” Exec. Order No. 14182, 90 Fed. Reg. 8751 (Jan. 24, 2025) (the “Abortion Order”).
 26 The Acting Director of the U.S. Office of Management and Budget (OMB) issued a
 27

memorandum to the heads of the executive agencies providing guidance on how agencies should implement the Abortion Order. Memorandum from Acting Director of OMB Matthew J. Vaeth to Heads of Executive Departments and Agencies (Jan. 24, 2025),
<https://www.whitehouse.gov/wp-content/uploads/2025/03/M-25-12-Memorandum-on-Hyde-Amendment-EO.pdf> (the “OMB Memo”). The OMB Memo told agency heads that the Trump administration’s policy is “not to use taxpayer funds to fund, facilitate, *or promote* abortion, including travel or transportation to obtain an abortion, consistent with the Hyde Amendment and other statutory restrictions on taxpayer funding for abortion.” *Id.* (emphasis added). The OMB Memo further instructed agency heads to “reevaluate” policies and other actions to conform with the Abortion Funding Order, audit federally funded activities suspected to contravene the Abortion Funding Order, and submit a monthly report to OMB on each agency’s progress in implementing the OMB Memo. *Id.*

2. HUD Attaches New, Unlawful Conditions to CoC Funding

71. In or around March and April of 2025, following President Trump’s issuance of the executive orders described above and Defendant Turner’s confirmation as HUD Secretary, HUD presented Plaintiffs with CoC grant agreements (collectively, the “Grant Agreements”) for some of the CoC funds Plaintiffs were awarded. These Grant Agreements contain additional funding conditions that were not included in the FYs 2024 & 2025 NOFO, and are not authorized by the Homeless Assistance Act, the Appropriations Act, or the Rule HUD itself promulgated to implement the CoC program. HUD has required Plaintiffs agree to these conditions to receive the CoC funds they are entitled to.

i. Overview of New, Unlawful Conditions

72. Each of the Grant Agreements presented to Plaintiffs contains substantially the

1 same unlawful, new terms and conditions, including the following (collectively, the “CoC
 2 Funding Conditions”):

3 73. First, the Grant Agreements state that “[t]his Agreement, the Recipient’s use of
 4 funds provided under this Agreement . . . , and the Recipient’s operation of projects assisted with
 5 Grant Funds” are “governed by” not only certain specified statutes, rules, and grant-related
 6 documents, but also by “all current Executive Orders.” The Grant Agreements further require
 7 recipients to comply with “applicable requirements that . . . may [be] establish[ed] from time to
 8 time to comply with . . . other Executive Orders” (together, the “EO Condition”).

9
 10 74. Second, a grant recipient must certify that:

11
 12 it does not operate any programs that violate any applicable Federal
 13 anti-discrimination laws, including Title VI of the Civil Rights Act
 14 of 1964.

15 The recipient must further agree that that this condition is “material” for purposes of the FCA by
 16 agreeing that:

17 its compliance in all respects with all applicable Federal anti-
 18 discrimination laws is material to the U.S. Government’s payment
 19 decisions for purposes of [the FCA].

20 75. While Plaintiffs have routinely certified compliance with federal
 21 nondiscrimination laws as a condition of federal funding in the past, the Administration’s
 22 communications to federal grant recipients make clear that the agencies seek compliance with
 23 the Trump administration’s novel, incorrect, and unsupported interpretation of federal
 24 nondiscrimination law as barring any and all DEI programs. Without Congress passing his anti-
 25 DEI agenda, President Trump instead purports to have granted himself unchecked Article II
 26 powers to legislate by executive order and impose his decrees on state and local governments
 27

1 seeking grant funding.

2 76. Third, the Grant Agreements provide:

3 No state or unit of general local government that receives funding
 4 under this grant may use that funding in a manner that by design or
 5 effect facilitates the subsidization or promotion of illegal
 6 immigration or abets policies that seek to shield illegal aliens from
 7 deportation

8 The Grant Agreements further require recipients to comply with “applicable requirements
 9 that . . . may [be] establish[ed] from time to time to comply with . . . [the Immigration
 Order] . . or immigration laws ” (together, the “CoC Enforcement Condition”).²

10 77. Fourth, the Grant Agreements impose requirements purportedly related to
 11 PRWORA and other immigration eligibility and verification requirements:

12 The recipient must administer its grant in accordance with all
 13 applicable immigration restrictions and requirements, including the
 14 eligibility and verification requirements that apply under title IV of
 15 [PRWORA] and any applicable requirements that HUD, the
 16 Attorney General, or the U.S. Center for Immigration Services [*sic*]
 17 may establish from time to time to comply with PRWORA,
 18 Executive Order 14218, or other Executive Orders or immigration
 19 laws.

20

21 Subject to the exceptions provided by PRWORA, the recipient must
 22 use [the Systematic Alien Verification for Entitlements (SAVE)
 23 system], or an equivalent verification system approved by the
 24 Federal government, to prevent any Federal public benefit from
 25 being provided to an ineligible alien who entered the United States
 26 illegally or is otherwise unlawfully present in the United States.
 27

(the “Verification Condition”).

28 78. Fifth, the Grant Agreements require the recipient to agree that it “shall not use

29 ² More recent grant agreements contain updated language that precisely recites the Immigration Order. In these, the
 30 last part of this condition reads “...or abets *so-called “sanctuary”* policies that seek to shield illegal aliens from
 31 deportation.

1 grant funds to promote ‘gender ideology,’ as defined in” the Gender Ideology Order (the
 2 “Gender Ideology Condition”).

3 79. Finally, the Grant Agreements require the recipient to agree that it “shall not use
 4 any Grant Funds to fund or promote elective abortions, as required by” the Abortion Order (the
 5 “Abortion Condition”).
 6

7 80. These conditions are unconstitutional and unlawful for several reasons. As an
 8 initial matter, neither the Homeless Assistance Act, the Appropriations Act, PRWORA, nor any
 9 other legislation authorizes HUD to attach these conditions to federal funds appropriated for CoC
 10 grants.
 11

ii. The EO Condition is unlawful

12 81. The EO Condition purports to incorporate *all* executive orders as “govern[ing]”
 13 the use of CoC funds and operation of CoC projects. These orders in many ways purport to adopt
 14 new laws by presidential fiat, amend existing laws, and overturn court precedent interpreting
 15 laws. In so doing, the EO Condition seeks to usurp Congress’s prerogative to legislate and its
 16 power of the purse, as well as the judiciary’s power to say what the law means.
 17

18 82. Further, the EO Condition is unconstitutionally vague. Executive orders are the
 19 President’s directives to federal agencies. These orders are unintelligible as applied to grant
 20 recipients. Further, the directives as implemented in the unlawful conditions at issue are vague
 21 and unintelligible.
 22

iii. The CoC Discrimination Condition is unlawful

23 83. Plaintiffs have routinely certified compliance with federal nondiscrimination laws
 24 as a condition of federal funding. But executive agency memoranda and letters make clear that
 25 the Trump administration’s conception of an “illegal” DEI program is contrary to actual
 26
 27

1 nondiscrimination statutes and is inconsistent what any court has endorsed when interpreting
 2 them.

3 84. For instance, a February 5, 2025 letter from Attorney General Pam Bondi to DOJ
 4 employees states that DOJ's Civil Rights Division will "penalize" and "eliminate" "illegal DEI
 5 and DEIA" activities and asserts that such activities include any program that "divide[s]
 6 individuals based on race or sex"—potentially reaching affinity groups or teaching about racial
 7 history. Letter from Pam Bondi, Attorney General, to all DOJ Employees (Feb. 5, 2025),
 8 <https://www.justice.gov/ag/media/1388501/dl?inline>.

9 85. That broad conception is confirmed in a letter from DOT Secretary Sean Duffy to
 10 all recipients of DOT funding stating that "[w]hether or not described in neutral terms, any
 11 policy, program, or activity that is premised on a prohibited classification, including
 12 discriminatory policies or practices designed to achieve so-called [DEI] goals, presumptively
 13 violates Federal Law." Letter from Sean Duffy, DOT Secretary, to All Recipients of DOT
 14 Funding (April 24, 2025) ("Duffy Letter"),
 15 <https://www.transportation.gov/sites/dot.gov/files/2025-04/Follow%20the%20Law%20Letter%20to%20Applicants%204.24.25.pdf>.

16 86. Defendant Turner has stated that "HUD is carrying out Present Trump's executive
 17 orders, mission, and agenda," by "[a]lign[ing] all programs, trainings, and *grant agreements* with
 18 the President's Executive Orders, removing diversity, equity, inclusion (DEI)." Press Release
 19 No. 25-059, *HUD Delivers Mission-Minded Results in Trump Administration's First 100 Days*,
 20 <https://www.hud.gov/news/hud-no-25-059> (emphasis added).

21 87. Taking to the Twitter platform now known as "X," Defendant Turner expressed
 22 how his agency intends to enforce the new conditions on HUD CoC Grants, stating, "CoC
 23

1 funds . . . will not promote DEI, enforce ‘gender ideology,’ support abortion, subsidize illegal
 2 immigration, and discriminate against faith-based groups.” Scott Turner Post of Mar. 13, 2025,
 3 <https://x.com/SecretaryTurner/status/1900257331184570703>.
 4

5 88. Neither the text of Title VI, nor any other statute or other condition enacted by
 6 Congress, prohibits recipients of federal funding from according concern to issues of diversity,
 7 equity, or inclusion. The Supreme Court has never interpreted Title VI to prohibit diversity,
 8 equity, and inclusion programs. Indeed, existing case law rejects the Trump administration’s
 9 expansive views on nondiscrimination law with respect to DEI. For example, this Court recently
 10 confirmed the lawfulness of a local government’s use of affinity groups and DEI initiatives in a
 11 case raising federal nondiscrimination law and equal protection claims. *See generally Diemert v.*
 12 *City of Seattle*, 2:22-CV-1640, 2025 WL 446753 (W.D. Wash. Feb. 10, 2025). The President has
 13 no authority to declare, let alone change, federal nondiscrimination law by executive fiat. Yet,
 14 the DEI Order seeks to impose his views on DEI as if they were the law by using federal grant
 15 conditions and the threat of FCA enforcement to direct and coerce federal grant recipients into
 16 acquiescing in his administration’s unorthodox legal interpretation of nondiscrimination law.
 17

18 89. Accepting these conditions would permit Defendants to threaten Plaintiffs with
 19 burdensome and costly enforcement action, backed by the FCA’s steep penalties, if they refuse
 20 to align their activities with President Trump’s political agenda. This threat is intensified by the
 21 Grant Agreements’ provision that purports to have recipients concede the DEI certification’s
 22 “materiality”—an otherwise “demanding” element of an FCA claim. Further, even short of
 23 bringing a suit, the FCA authorizes the Attorney General to serve civil investigative demands on
 24 anyone reasonably believed to have information related to a false claim—a power that could be
 25 abused to target grant recipients with DEI initiatives the Trump administration disapproves of.
 26

1 *Id.* § 3733.

2 90. The FCA is intended to discourage and remedy fraud perpetrated against the
 3 United States—not to serve as a tool for the Executive to impose unilateral changes to
 4 nondiscrimination law, which is instead within the province of Congress in adopting the laws
 5 and the Judiciary in interpreting them.

6

7 ***iv. The Enforcement Condition is unlawful***

8 91. Congress has not delegated to HUD authority to condition CoC funding on a
 9 recipient’s agreement not to “promot[e] . . . illegal immigration” or “abet[] policies that seek to
 10 shield illegal aliens from deportation.” It also is unclear what type of conduct this might
 11 encompass, leaving federal grant recipients without fair notice of what activities would violate
 12 the prohibition and by giving agencies free rein to arbitrarily enforce it.

13

14 92. Indeed, on April 24, 2025, Judge William H. Orrick of the United States District
 15 Court for the Northern District of California preliminary enjoined the federal government from
 16 “directly or indirectly taking any action to withhold, freeze, or condition federal funds from”
 17 sixteen cities and counties—including Plaintiffs King County, Santa Clara, and San Francisco—
 18 on the basis of Section 2(a)(ii) of the Immigration Order, which directs that no “Federal
 19 payments” be made to states and localities if the “effect,” even unintended, is to fund activities
 20 that the administration deems to “facilitate” illegal immigration or “abet so-called ‘sanctuary’
 21 policies.” *City & Cnty. of San Francisco v. Trump*, 25-CV-01350-WHO, 2025 WL 1186310
 22 (N.D. Cal. Apr. 24, 2025). The court ruled that the direction “to withhold, freeze, or condition
 23 federal funding apportioned to localities by Congress, violate[s] the Constitution’s separation of
 24 powers principles and the Spending Clause”; “violate[s] the Fifth Amendment to the extent [it is]
 25 unconstitutionally vague and violate[s] due process”; and “violate[s] the Tenth Amendment

because [it] impose[s] [a] coercive condition intended to commandeer local officials into enforcing federal immigration practices and law.” *Id.* at *2.

v. *The Verification Condition is unlawful*

93. Further, PRWORA does not authorize the Verification Condition for at least two reasons. First, PRWORA explicitly does *not* require states to have an immigration status verification system until twenty-four months after the Attorney General promulgates certain final regulations. 8 U.S.C. § 1642(b). Those regulations must, among other things, establish procedures by which states and local governments may verify eligibility and procedures for applicants to prove citizenship “in a fair and nondiscriminatory manner.” *Id.* § 1642(b)(ii), (iii). The Attorney General has issued interim guidance and a proposed verification rule, but never implemented a final rule. *See* Interim Guidance on Verification of Citizenship, Qualified Alien Status and Eligibility Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 62 Fed. Reg. 61344 (Nov. 17, 1997); Verification of Eligibility for Public Benefits, 63 Fed. Reg. 41662 (Aug. 4, 1998) (proposed rule). This failure to promulgate a final regulation left in place DOJ’s Interim Guidance, which requires only the examination of identity and immigration documentation. 62 Fed. Reg. at 61348–49. Absent implementing regulations, Plaintiffs are not required to verify participants’ immigration status using SAVE or an equivalent verification system. *See* 42 U.S.C. § 1320b-7. Requiring recipients to do so exceeds the authority created in PRWORA.

94. Second, SAVE is a database operated by DHS that is sometimes used to assist federal immigration enforcement actions. The condition would require Plaintiffs to gain access to this system, train their own employees how to use the system, and require them to enter immigration information. Such an effort to commandeer local resources for matters related to

1 federal immigration enforcement is counter to federal law, as well as applicable local and state
 2 laws precluding local participation in federal immigration enforcement.

3 *vi. The Gender Ideology Condition is unlawful*

4 95. The Gender Ideology Condition improperly seeks to force federal grant recipients
 5 to no longer recognize transgender, gender diverse, and intersex people by restricting funding
 6 that promotes “gender ideology.” This violates HUD’s own regulations, which mandate “equal
 7 access” to CoC “programs, shelters, other buildings and facilities, benefits, services, and
 8 accommodations is provided to an individual in accordance with the individual’s gender identity,
 9 and in a manner that affords equal access to the individual’s family,” including facilities with
 10 “shared sleeping quarters or shared bathing facilities.” 24 C.F.R. § 5.106(b)–(c). HUD
 11 regulations also prohibit subjecting an individual “to intrusive questioning or asked to provide
 12 anatomical information or documentary, physical, or medical evidence of the individual’s gender
 13 identity.” *Id.* § 5.106(b)(3). While Defendant Turner announced HUD will no longer enforce
 14 these regulations, the regulations remain in effect and applicable to the CoC program.
 15

16 96. The Gender Ideology Condition is also vague. The definition of “gender
 17 ideology” is not only demeaning, but also idiosyncratic and unscientific. Further, given the
 18 expansive meaning of “promote,” federal agencies have free rein to punish recipients who
 19 merely collect information on gender identity, which has long been authorized and encouraged
 20 by HUD in its binding regulations, as such information can be used to improve the quality and
 21 efficacy of homeless services.
 22

23 97. The Trump administration has already terminated federal funding as a result of
 24 agency action carrying out the Gender Ideology Order and related executive orders. For example,
 25 one of the largest free and reduced-cost healthcare providers in Los Angeles reported that the
 26
 27

1 U.S. Centers for Disease Control and Prevention (CDC) terminated a \$1.6 million grant that
 2 would have supported the clinic's transgender health and social health services program. The
 3 CDC ended the grant in order to comply with the Gender Ideology Order. *See Kristen Hwang,*
 4 *LA clinics lose funding for transgender health care as Trump executive orders take hold*, Cal
 5 Matters (Feb. 4, 2025), [https://calmatters.org/health/2025/02/trump-executive-order-transgender-](https://calmatters.org/health/2025/02/trump-executive-order-transgender-health/)
 6 [health/](#).

8 98. On February 28, 2025, this Court enjoined enforcement of the Gender Ideology
 9 Order in part (including parts the Gender Ideology Condition incorporates by references),
 10 holding that the plaintiffs had shown a likelihood of success on their claims that the Order
 11 violates the Fifth Amendment's guarantee of equal protection and the separation of powers.
 12 *Wash. v. Trump*, 2:25-CV-00244-LK, 2025 WL 659057, at *11–17, *24–25 (W.D. Wash. Feb.
 13 28, 2025). Particularly relevant here, the Court ruled that the plaintiffs were likely to succeed in
 14 showing that “[b]y attaching conditions to federal funding that were . . . unauthorized by
 15 Congress,” subsections 3(e) and (g) of the Gender Ideology Order “usurp Congress’s spending,
 16 appropriation, and legislative powers.” *Id.* at *11. The Court explained that the Gender Ideology
 17 Order “reflects a ‘bare desire to harm a politically unpopular group’” by “deny[ing] and
 18 denigrat[ing] the very existence of transgender people.” *Id.* at *24 (citation omitted).

21 *vii. The Abortion Condition is unlawful*

22 99. The Abortion Condition (including the Abortion Order incorporated by reference)
 23 does not implement, but rather exceeds, the Hyde Amendment’s narrow prohibition on using
 24 federal funds to pay for, or require others to perform or facilitate, abortions. While it purports to
 25 apply the Hyde Amendment—a provision that has been enacted in successive appropriations acts
 26 that limits the use of federal funds for abortions (subject to narrow exceptions)—in reality it goes

1 well beyond the Hyde Amendment. The Hyde Amendment to the 2024 Appropriations Act
 2 specifically and narrowly prohibits the use of appropriated funds to “require any person to
 3 perform, or facilitate in any way the performance of, any abortion” or to “pay for an abortion,
 4 except where the life of the mother would be endangered if the fetus were carried to term, or in
 5 the case of rape or incest.” Pub. L. 118-42, §§ 202, 203, 138 Stat. 25 (March 9, 2024). But the
 6 Hyde Amendment to the 2024 Appropriations Act does not require grant recipients to refrain
 7 from “*promot[ing]* abortion”—a vague prohibition that is susceptible to arbitrary enforcement.
 8 And in doing so, the Abortion Condition usurps Congress’s spending, appropriations, and
 9 legislative power.

100. In sum and as further explained below, HUD’s imposition of the CoC Funding
 Conditions violates the Separation of Powers, the Spending Clause, the Fifth Amendment’s void-
 for-vagueness doctrine, and the APA.

15 **3. The FTA Attaches New, Unlawful Conditions to FTA Grants**

101. On March 26, 2025, the FTA issued an updated Master Agreement applicable to
 all funding awards authorized under specified federal statutes, including the four FTA Grant
 programs discussed above.

102. The March 26 Master Agreement imposed a new condition on all FTA Grants
 implementing President Trump’s directive, as set out in the DEI Order, to condition federal grant
 funds on recipients’ agreement not to promote DEI and to concede this requirement is material
 for purposes of the FCA (“FTA Discrimination Condition”). While FTA grants have long
 required compliance with nondiscrimination laws and have been subject to the FCA, the March
 26 Master Agreement provided:

- 26 (1) Pursuant to section (3)(b)(iv)(A), Executive Order 14173,
 27 Ending Illegal Discrimination and Restoring Merit-Based

Opportunity, the Recipient agrees that its compliance in all respects with all applicable Federal antidiscrimination laws is material to the government's payment decisions for purposes of [the FCA].

(2) Pursuant to section (3)(b)(iv)(B), Executive Order 14173, Ending Illegal Discrimination and Restoring Merit-Based Opportunity, by entering into this Agreement, the Recipient certifies that it does not operate any programs promoting diversity, equity, and inclusion (DEI) initiatives that violate any applicable Federal anti-discrimination laws.

103. That FTA plans to enforce these new conditions more broadly than current nondiscrimination law is reinforced by the March 26 Master Agreement's requirement that the “comply with other applicable federal nondiscrimination laws, regulations, and requirements, and follow *federal guidance prohibiting discrimination*.”

104. Further, the Agreement defined “Federal Requirement” to include “[a]n applicable federal law, regulation, or *executive order*” (the “FTA EO Condition”). Likewise, the Agreement defined “Federal Guidance” to include “any federal document or publication signed by an authorized federal official providing official instructions or advice about a federal program that is not defined as a ‘federal requirement’ and applies to entities other than the Federal Government.”

105. The FTA Discrimination Condition also is in apparent tension with other requirements in the Master Agreement. For example, the Master Agreement requires compliance with 2 C.F.R. § 300.321, which states, “[w]hen possible, the recipient or subrecipient should ensure that small businesses, minority businesses, women’s business enterprises, veteran-owned businesses, and labor surplus area firms” are, *inter alia*, “included on solicitation lists” and “solicited” when “deemed eligible.”

106. The Duffy Letter to all recipients of DOT grants (including the FTA Grants) further addresses the broad scope of the administration’s anti-DEI agenda and how it conflicts

1 with established federal nondiscrimination law, taking the position that any policy, program, or
 2 activity “designed to achieve so-called [DEI] goals”—even if “described in neutral terms”—
 3 “presumptively” violates federal nondiscrimination laws. The Duffy Letter also threatens
 4 “vigorous[] enforcement,” ranging from comprehensive audits, claw-back of grant funds, and
 5 termination of grant awards to enforcement actions and loss of any future federal funding from
 6 DOT.
 7

8 107. On April 25, 2025, the FTA issued another updated Master Agreement applicable
 9 to all funding awards authorized under specified federal statutes, including the four FTA Grant
 10 programs discussed above.

11 108. The April 25 Master Agreement contains the same FTA Discrimination Condition
 12 and the FTA EO Condition set forth above. But the April 25 Master Agreement contains an
 13 additional condition requiring recipients to cooperate with federal immigration enforcement
 14 efforts (the “FTA Enforcement Condition”).
 15

16 109. In particular, the FTA Enforcement Condition amends an existing provision
 17 addressing free speech and religious liberty as follows (new language emphasized):
 18

19 The Recipient shall ensure that Federal funding is expended in full
 20 accordance with the U.S. Constitution, Federal Law, and statutory
 21 and public policy requirements: including, but not limited to, those
 22 protecting free speech, religious liberty, public welfare, the
 23 environment, and prohibiting discrimination; *and the Recipient*
will cooperate with Federal officials in the enforcement of Federal
law, including cooperating with and not impeding U.S.
Immigration and Customs Enforcement (ICE) and other Federal
offices and components of the Department of Homeland Security in
the enforcement of Federal immigration law.

24 110. The Duffy Letter to all recipients of DOT grants (including the FTA Grants)
 25 states that “DOT expects its recipients to comply with Federal law enforcement directives and to
 26 cooperate with Federal officials in the enforcement of Federal immigration law” and that
 27

1 “[d]eclining to cooperate with the enforcement of Federal immigration law or otherwise taking
 2 action intended to shield illegal aliens from ICE detection contravenes Federal law and may give
 3 rise to civil and criminal liability.”

4 111. Neither the statutory provisions creating the FTA Grants, the relevant
 5 appropriations acts, nor any other legislation authorizes the FTA to condition these funds on the
 6 recipient’s certification that it does not “promote DEI,” its admission that its compliance with
 7 this prohibition is material for purposes of the FCA, or its agreement to “cooperate” with federal
 8 immigration enforcement efforts. Federal grant recipients must comply with nondiscrimination
 9 and other federal laws. But executive orders and letters from agency heads cannot change what
 10 these laws require under existing court decisions.

12 112. In sum and as further explained below, the FTA Discrimination Condition, the
 13 FTA EO Condition, and the FTA Immigration Enforcement Condition (collectively, the “FTA
 14 Funding Conditions) violate the violates the Separation of Powers, the Spending Clause, Tenth
 15 Amendment’s anti-commandeering principle, the Fifth Amendment’s void-for-vagueness
 16 doctrine, and the APA.

17 **D. Plaintiffs Face an Impossible Choice of Accepting Illegal Conditions, or
 18 Forgoing Federal Funding for Critical Programs and Services**

20 113. The grant conditions that Defendants seek to impose leave Plaintiffs with the
 21 Hobson’s choice of accepting illegal conditions that are without authority, contrary to the
 22 Constitution, and accompanied by the poison pill of heightened risk of FCA claims, or foregoing
 23 the benefit of grant funds—paid for (at least partially) through local federal taxes—that are
 24 necessary for crucial local services. The uncertainty caused by these illegal conditions has
 25 impeded Plaintiffs’ ability to budget and plan for services covered by the grants.

27 114. Withholding CoC grants from Plaintiffs would result in a loss of hundreds of
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1 millions in funding for housing and other services that Plaintiffs have adopted to meet the basic
 2 needs of their homeless residents. It would result in Plaintiffs being unable to serve their
 3 residents resulting in the loss of access to housing, healthcare, counseling, and other assistance.
 4 The loss of this funding, which represents a significant percentage of each Plaintiff's total budget
 5 for homelessness services, would have devastating effects on Plaintiffs' residents and
 6 communities more broadly.

8 115. Withholding FTA Grants from plaintiff King County would result in a loss of
 9 hundreds of millions in funding for public transit services operated by certain plaintiffs,
 10 including capital projects, maintenance, and improvements, that will result in long-lasting harm
 11 to King County's finances. The loss of this funding, which represents a significant percentage of
 12 its total budget for public transit services, would threaten transit improvements and safety
 13 initiatives and have severe negative impacts on these services.

15 V. CAUSES OF ACTION

16 **Count 1: Separation of Powers**

17 *(All Funding Conditions)*

18 *(All Plaintiffs as to CoC/ King County as to FTA)*

19 116. Plaintiffs re-allege and incorporate the above as if set forth fully herein.

20 117. The Constitution "exclusively grants the power of the purse to Congress, not the
 21 President." *City & Cnty. of S.F. v. Trump*, 897 F.3d 1225, 1231 (9th Cir. 2018). This power is
 22 "directly linked to [Congress's] power to legislate," and "[t]here is no provision in the
 23 Constitution that authorizes the President to enact, to amend, or to repeal statutes." *Id.* (second
 24 alteration in original) (quoting *Clinton v. City of New York*, 524 U.S. 417, 438 (1998)).

25 118. The Constitution vests Congress—not the Executive—with legislative powers,
 26 *see* U.S. Const. art. 1, § 1, the spending power, *see* U.S. Const. art. 1, § 8, cl. 1, and the

1 appropriations power, *see U.S. Const. art. 1, § 9, cl. 7.* Absent an express delegation, only
 2 Congress is entitled to attach conditions to federal funds.

3 119. “The Framers viewed the legislative power as a special threat to individual
 4 liberty, so they divided that power to ensure that ‘differences of opinion’ and the ‘jarrings of
 5 parties’ would ‘promote deliberation and circumspection’ and ‘check excesses in the majority.’”
 6 *Seila Law LLC v. Consumer Fin. Prot. Bureau*, 591 U.S. 197, 223 (2020) (quoting *The Federalist*
 7 No. 70, at 475 (A. Hamilton) and citing *id.*, No. 51, at 350).

8 120. “As Chief Justice Marshall put it, this means that ‘important subjects . . . must be
 9 entirely regulated by the legislature itself,’ even if Congress may leave the Executive ‘to act
 10 under such general provisions to fill up the details.’” *West Virginia v. EPA*, 597 U.S. 697, 737
 11 (2022) (Gorsuch, J., concurring) (quoting *Wayman v. Southard*, 10 Wheat. 1, 42–43, 6 L. Ed.
 12 253 (1825)).

13 121. The separation of powers doctrine thus represents perhaps the central tenet of our
 14 Constitution. *See, e.g., Trump v. United States*, 603 U.S. 593, 637–38 (2024); *West Virginia v.*
 15 *EPA*, 597 U.S. at 723–24; *Seila Law LLC*, 591 U.S. at 227. Consistent with these principles, the
 16 executive acts at the lowest ebb of his constitutional authority and power when he acts contrary
 17 to the express or implied will of Congress. *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S.
 18 579, 637 (1952) (Jackson, J., concurring).

19 122. Pursuant to the separation of powers doctrine, the Executive Branch may not
 20 “claim[] for itself Congress’s exclusive spending power, . . . [or] coopt Congress’s power to
 21 legislate.” *City & Cnty. of S.F.*, 897 F.3d at 1234. Indeed, the Impoundment Control Act of 1974
 22 requires the President to notify and request authority from Congress to rescind or defer the
 23 expenditure of funds *before* acting to withhold or pause federal payments. 2 U.S.C. §§ 681 *et*
 24 *alii*.

seq. The President has not done so.

123. Congress has not conditioned the provision of CoC grant funds or FTA Grants on compliance with a prohibition on all forms of DEI policies and initiatives, nor on promoting aggressive and lawless immigration enforcement, requiring exclusion of transgender people, or cutting off access to information about lawful abortions. Nor has Congress delegated to Defendants the authority to attach the CoC Funding Conditions or the FTA Funding Conditions unilaterally.

124. By imposing the CoC Funding Conditions and the FTA Funding Conditions on grant recipients, Defendants are unilaterally attaching new conditions to federal funding without authorization from Congress.

125. Further, the “[t]he interpretation of the meaning of statutes, as applied to justiciable controversies,” is “exclusively a judicial function.” *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369, 411–13 (2024) (internal quotations omitted).

126. Here, HUD and the FTA seek to impose conditions that purport to require compliance with the law interpreted and envisioned by the Executive, contrary to Congress's authority to legislate and the Judiciary's interpretation of the law's meaning.

127. For these reasons, Defendants' conditioning of CoC grants on Plaintiffs' compliance with the CoC Funding Conditions violates the separation of powers doctrine.

128. For the same reasons, Defendants' conditioning of FTA Grants on King County's compliance with the FTA Funding Conditions violates the separation of powers doctrine.

Count 2: Spending Clause
(All Funding Conditions)
(All Plaintiffs as to CoC / King County as to FTA)

129. Plaintiffs re-allege and incorporate the above as if set forth fully herein.

1 130. The Spending Clause of the U.S. Constitution provides that “Congress”—not the
 2 Executive—“shall have Power to lay and collect Taxes, Duties, Imposts and Excises, to pay the
 3 Debts and provide for the common Defence and general Welfare of the United States” U.S.
 4 Const. art. I, § 8, cl. 1.

5 131. As described above, Defendants violate the separation of powers because the CoC
 6 Funding Conditions and the FTA Funding Conditions are neither expressly nor impliedly
 7 authorized by Congress. For the same reasons, Defendants violate the Spending Clause as well.

8 132. The Spending Clause also requires States to have fair notice of conditions that
 9 apply to federal funds disbursed to them. *Pennhurst State Sch. & Hosp. v. Halderman*, 451 U.S.
 10 1, 17, 25 (1981). The funding conditions must be set forth “unambiguously.” *Arlington Cent.*
 11 *Sch. Dist. Bd. of Educ. v. Murphy*, 548 U.S. 291, 296 (2006).

12 133. Moreover, funding restrictions may only impose conditions that are reasonably
 13 related to the federal interest in the project and the project’s objectives. *S. Dakota v. Dole*, 483
 14 U.S. 203, 207, 208 (1987).

15 134. Finally, federal funds “may not be used to induce the States to engage in activities
 16 that would themselves be unconstitutional.” *Id.* at 210.

17 135. Even if Congress had delegated authority to the Executive and HUD to condition
 18 CoC grant funding on terms prohibiting all forms of DEI policies and initiatives, promoting
 19 aggressive and lawless immigration enforcement, requiring exclusion of transgender people, or
 20 cutting off access to information about lawful abortions, the funding conditions set forth in the
 21 CoC Grant Agreements would violate the Spending Clause by:

- 22 a. imposing conditions that are ambiguous, *see Pennhurst*, 451 U.S. at 17;
- 23 b. imposing conditions that are so severe as to coerce Plaintiffs;

- 1 c. imposing conditions that are not germane to the stated purpose of CoC program
- 2 funds, *see Dole*, 483 U.S. at 207 (“[C]onditions on federal grants might be
- 3 illegitimate if they are unrelated ‘to the federal interest in particular national
- 4 projects or programs.’”); and
- 5 d. with respect to the prohibition on promotion of “gender ideology,” imposing a
- 6 condition that purports to require Plaintiffs to act unconstitutionally by
- 7 discriminating on the basis of gender identity and sex, *see id.* at 210.

9 136. Similarly, even if Congress had delegated authority to the Executive and the FTA
10 to condition FTA Grants on recipients’ agreement on terms prohibiting all forms of DEI policies
11 and initiatives as conceived by the Administration or enforcement of federal immigration laws,
12 the funding conditions set forth in the Master Agreement would violate the Spending Clause by
13 imposing ambiguous funding conditions and, with respect to promoting the aggressive
14 enforcement of federal immigration laws, imposing conditions not germane to the public transit
15 purposes of the statutes that create the FTA Grant programs.

17 **Count 3: Tenth Amendment**
18 *(FTA Funding Conditions only)*
19 *(King County only)*

20 137. Plaintiffs re-allege and incorporate the above as if set forth fully herein.
21 138. The Tenth Amendment provides that “[t]he powers not delegated to the United
22 States by the Constitution, nor prohibited by it to the States, are reserved to the States
23 respectively, or to the people.” U.S. Const. amend X.

24 139. Legislation that “coerces a State to adopt a federal regulatory system as its own”
25 “runs contrary to our system of federalism.” *Nat'l Fed'n of Indep. Bus. v. Sebelius*, 567 U.S. 519,
26 577–78 (2012). States must have a “legitimate choice whether to accept the federal conditions in

¹⁰ exchange for federal funds.” *Id.* at 578.

140. Even if Congress had delegated authority to the Executive and FTA to condition
FTA grant funding on a prohibition on any policy that “promotes” the Administration’s
conception of an “illegal” DEI program or on participation in the Administration’s aggressive
enforcement of federal immigration laws, these conditions would violate the Tenth Amendment
by imposing conditions so severe—for King County, potential loss of over \$446 million of
appropriated FTA funds and, with respect to the DEI condition, a heightened threat of FCA
enforcement—as to coerce King County to adopt the Administration’s reinterpretation of the
law. *See id.* at 579 (Congress may not impose conditions so severe that they “cross[] the line
distinguishing encouragement from coercion.”).

Count 4: Fifth Amendment Due Process (Vagueness)

(All Funding Conditions)

(All Plaintiffs as to CoC / King County as to FTA)

141. Plaintiffs re-allege and incorporate the above as if set forth fully herein.

142. Under the Due Process Clause of the Fifth Amendment, a governmental enactment, like an executive order, is unconstitutionally vague if it “fails to provide a person of ordinary intelligence fair notice of what is prohibited, or is so standardless that it authorizes or encourages seriously discriminatory enforcement.” *United States v. Williams*, 553 U.S. 285, 304 (2008).

143. The CoC Funding Conditions and the FTA Funding Conditions are unconstitutional vagueness.

144. Initially, the CoC EO Condition and the FTA EO Condition are vague in purporting to incorporate all executive orders. Executive orders are the President's directives to federal agencies and do not apply to federal grant recipients. The purported incorporation of "all

1 current Executive Orders” into “the Recipient’s use of funds provided under this Agreement”
 2 and “the Recipient’s operation of projects assisted with Grant Funds” renders the other new
 3 funding conditions vague.

4 145. For instance, the CoC Discrimination Condition and the FTA Discrimination
 5 Condition fail to make clear what conduct is prohibited and fail to specify clear standards for
 6 enforcement. This uncertainty is amplified by agency letters and statements, including the Duffy
 7 Letter and Turner statements, that are at odds with case law and statutes.
 8

9 146. The CoC Enforcement Condition (which incorporates by reference the
 10 Immigration Order) fail to define the terms “facilitates,” “subsidization,” or “promotion” with
 11 respect to “illegal immigration,” leaving federal grant recipients without fair notice of what
 12 would violate the prohibition.
 13

14 147. Similarly, the FTA Immigration Enforcement Condition fails to define the terms
 15 “cooperate,” “cooperating,” “impeding,” and “enforcement” with respect to “Federal
 16 immigration law,” leaving federal grant recipients without fair notice of what would violate the
 17 prohibition.
 18

19 148. The definition of “gender ideology” adopted in the Gender Ideology Condition is
 20 so vague as to require people of ordinary intelligence to guess as to what is prohibited. By the
 21 same token, the Gender Ideology Condition affords unfettered discretion to HUD and other
 22 agencies to determine, based on their subjective interpretation, whether a federal grant is used to
 23 “promote gender ideology.”
 24

25 149. The meaning of the phrase “promote elective abortion” is also vague, leaving
 26 federal grant recipients without fair notice of what activities would violate the prohibition and
 27 affording HUD and other agencies unfettered discretion.
 28

150. The vagueness with which the terms and conditions identified above define the conduct they prohibit is likely to chill First Amendment protected expression on matters of public concern.

151. Thus, the CoC Funding Conditions and FTA Funding Conditions are unconstitutional in violation of the Fifth Amendment's Due Process Clause.

Count 5: Administrative Procedure Act, 5 U.S.C. § 706(2)
Arbitrary and Capricious
(All Funding Conditions)
(All Plaintiffs as to CoC / King County as to FTA)

152. Plaintiffs re-allege and incorporate the above as if set forth fully herein.

153. Defendants HUD and the FTA are both “agenc[ies]” as defined in the APA, 5 U.S.C. § 551(1). Additionally, the Grant Agreements and the Master Agreement are both agency actions subject to review under the APA.

154. Final agency actions (1) “mark the ‘consummation’ of the agency’s decision-making process” and (2) are ones “by which ‘rights or obligations have been determined,’ or from which ‘legal consequences will flow.’” *Bennett v. Spear*, 520 U.S. 154, 178 (1997).

155. The Grant Agreements are final agency actions because they reflect final decisions—in accord with presidential directives—to require grant recipients to comply with various Trump administration policy priorities as a condition to receiving federal CoC funds. See *State ex rel. Becerra v. Sessions*, 284 F. Supp. 3d 1015, 1031–32 (N.D. Cal. 2018) (holding that agency decision to impose new conditions on federal grants satisfies both tests for final agency action because it “articulate[s] that certain funds” will “require adherence to the” new conditions and “opens up the [recipient] to potential legal consequences,” including withholding of funds if the recipient declines to accept the conditions); *Planned Parenthood of N.Y.C., Inc. v. U.S. Dep’t of Health & Human Servs.*, 337 F. Supp. 3d 308, 328–29 (S.D.N.Y. 2018) (same).

1 156. Similarly, the Master Agreement is a final agency action because it reflects a final
 2 decision—in accord with presidential directives—to require grant recipients to comply with
 3 various Trump administration policy priorities as a condition to receiving federal FTA funds.
 4

5 157. These actions determine rights and obligations and produce legal consequences
 6 because they exercise purported authority to create new conditions on already awarded funds that
 7 would obligate recipients to comply with the Executive’s policy priorities.

8 158. Under the APA, a “court shall . . . hold unlawful and set aside agency actions,
 9 findings, and conclusions found to be . . . arbitrary, capricious, an abuse of discretion, or
 10 otherwise not in accordance with law.” 5 U.S.C. § 706(2)(A).

11 159. “An agency action qualifies as ‘arbitrary’ or ‘capricious’ if it is not ‘reasonable
 12 and reasonably explained.’” *Ohio v. EPA*, 603 U.S. 279, 292 (2024) (quoting *FCC v. Prometheus
 13 Radio Project*, 592 U.S. 414, 423 (2021)). A court must therefore “ensure, among other things,
 14 that the agency has offered ‘a satisfactory explanation for its action[,] including a rational
 15 connection between the facts found and the choice made.’” *Id.* (quoting *Motor Vehicle Mfrs.
 16 Assn. of United States, Inc. v. State Farm Mut. Automobile Ins. Co.*, 463 U.S. 29, 43 (1983)).
 17 “[A]n agency cannot simply ignore ‘an important aspect of the problem’” addressed by its
 18 action. *Id.* at 293.

20 160. HUD has provided no reasoned explanation for its decision to impose conditions
 21 related to prohibiting all kinds of DEI, facilitating enforcement of federal immigration laws,
 22 verifying immigration status, and prohibiting the “promot[ion]” of “gender ideology” and
 23 “elective abortion” on CoC funds that have no connection to those issues.

25 161. HUD has provided no reasoned basis for withholding funds Congress
 26 appropriated for disbursement, except to the extent the Grant Agreements make clear HUD is
 27

1 enacting the President's policy desires, as expressed in Executive Orders 14168, 14173, 14182,
 2 and 14218, in place of Congress's intent.

3 162. HUD also ignores essential aspects of the "problem" it purports to address via the
 4 CoC program, including Plaintiffs' reasonable and inevitable reliance on now at-risk funds, the
 5 expectation of reimbursement from already appropriated funds, and the potential impacts on
 6 homeless individuals and families who may be dissuaded from accepting services if they must
 7 verify their immigration status or are unable to use their identified gender in doing so.

9 163. Similarly, the FTA has provided no reasoned basis for anti-DEI-related conditions
 10 to all FTA Grants, seeking to impose the Administration's view on all policies and programs,
 11 even when they are unrelated to programs receiving FTA funding. Moreover, the FTA has failed
 12 to explain how Plaintiffs could simultaneously comply with the FTA Discrimination Condition,
 13 while also complying with other requirements in the Master Agreement that are in apparent
 14 tension with that condition. *See* Master Agreement § 48(b)(3) (requiring compliance with 2
 15 C.F.R. § 300.321, which states, "[w]hen possible, the recipient or subrecipient should ensure that
 16 small businesses, minority businesses, women's business enterprises, veteran-owned businesses,
 17 and labor surplus area firms" are, *inter alia*, "included on solicitation lists" and "solicited" when
 18 "deemed eligible").

20 164. Nor has the FTA provided a reasoned basis for imposing conditions related to
 21 "cooperation" with federal immigration enforcement on FTA funds that have no connection to
 22 that issue.

24 165. The FTA also has ignored Plaintiffs' reasonable reliance on awarded, but not yet
 25 obligated, funds and the expectation of reimbursement from already appropriated funds.

26 166. Plaintiffs therefore ask the Court to declare under 5 U.S.C. § 706 and 28 U.S.C. §

1 2201 that imposing the CoC Funding Conditions and the FTA Funding Conditions violates the
 2 APA because it is arbitrary and capricious; provide preliminary relief under 5 U.S.C. § 705; and
 3 preliminarily and permanently enjoin Defendants from imposing the CoC Funding Conditions or
 4 FTA Funding Conditions without complying with the APA.

5 **Count 6: Administrative Procedure Act, 5 U.S.C. § 706(2)**
 6 **Contrary to Constitution**

7 *(All Plaintiffs as to CoC / King County as to FTA)*

8 167. Plaintiffs re-allege and incorporate the above as if set forth fully herein.

9 168. Under the APA, a “court shall . . . hold unlawful and set aside agency actions,
 10 findings, and conclusions found to be . . . contrary to constitutional right, power, privilege, or
 11 immunity.” 5 U.S.C. § 706(2)(B).

12 169. As described above, HUD’s imposition of the CoC Funding Conditions violates
 13 bedrock constitutional provisions and principles including the separation of powers between the
 14 President and Congress, the Spending Clause, and the Fifth Amendment.

16 170. In addition, the FTA’s imposition of the FTA Funding Conditions violates the
 17 separation of powers, the Spending Clause, the Tenth Amendment, and the Fifth Amendment.

18 171. Plaintiffs therefore ask the Court to declare under 5 U.S.C. § 706 and 28 U.S.C. §
 19 2201 that imposing the CoC Funding Conditions and FTA Funding Conditions violates the APA
 20 because it is contrary to constitutional rights, powers, privileges, or immunities; provide
 21 preliminary relief under 5 U.S.C. § 705; and preliminarily and permanently enjoin Defendants
 22 from imposing the CoC Funding Conditions or FTA Funding Conditions without complying
 23 with the APA.

Count 7: Administrative Procedure Act, 5 U.S.C. § 706(2)**In Excess of Statutory Authority***(All Funding Conditions)**(All Plaintiffs as to CoC/King County as to FTA)*

172. Plaintiffs re-allege and incorporate the above as if set forth fully herein.

173. Under the APA, a “court shall . . . hold unlawful and set aside agency actions, findings, and conclusions found to be . . . in excess of statutory jurisdiction, authority, or limitations, or short of statutory right.” 5 U.S.C. § 706(2)(C).

174. Defendants may exercise only authority granted to them by statute or the Constitution.

175. No law or provision of the Constitution authorizes HUD or the FTA to impose extra-statutory conditions not authorized by Congress on congressionally-appropriated funds.

176. Neither the Homeless Assistance Act, the Appropriations Act, PRWORA, nor any other legislation authorizes HUD to impose conditions on CoC grant funding related prohibiting all forms of DEI policies and initiatives, promoting aggressive and lawless immigration enforcement, requiring exclusion of transgender people, or cutting off access to information about lawful abortions.

177. In addition, none of the statutes creating the FTA Grants nor the relevant appropriations acts authorize the FTA to impose conditions on federal transit funding related to prohibiting all forms of DEI policies and initiatives or promoting aggressive and lawless immigration enforcement.

178. Indeed, by threatening to unilaterally withhold funds on the basis of unauthorized agency-imposed funding conditions, HUD and the FTA attempt to circumvent the process established in the Impoundment Control Act of 1974, which requires the President to notify and request authority from Congress to rescind or defer the expenditure of funds *before* acting to

withhold or pause federal payments. 2 U.S.C. §§ 681 *et seq.*

179. Plaintiffs therefore ask the Court to declare under 5 U.S.C. § 706 and 28 U.S.C. §
2201 that imposing the CoC Funding Conditions and the FTA Funding Conditions violates the
APA because it is in excess of HUD's and the FTA's statutory jurisdiction, authority, or
limitations, or short of statutory right; provide preliminary relief under 5 U.S.C. § 705; and
preliminarily and permanently enjoin HUD and the FTA from imposing the CoC Funding
Conditions or FTA Funding Conditions without complying with the APA.

Count 8: Administrative Procedure Act, 5 U.S.C. § 706(2)

Agency Action Contrary to Regulation

(All Funding Conditions)

(All Plaintiffs as to CoC / King County as to FTA)

180. Plaintiffs re-allege and incorporate the above as if set forth fully herein.

181. Under the APA, a "court shall . . . hold unlawful and set aside agency actions,

findings, and conclusions found to be . . . arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law” or “without observance of procedure required by law.” 5 U.S.C. § 706(2)(A).

182. HUD’s Rule implementing the CoC program provides that recipients may be required to sign grant agreements containing terms and additional conditions established by HUD beyond those specifically listed to the extent those terms and conditions are established in the applicable NOFO. 24 C.F.R. § 578.23(c)(12). The NOFO under which Plaintiffs were awarded CoC funding for FY 2024 contains no terms or conditions related to prohibiting all kinds of DEI, facilitating enforcement of federal immigration laws, verifying immigration status, or prohibiting the “promot[ion]” of “gender ideology” or “elective abortion.”

183. By imposing new terms and conditions on Grant Agreements not included in the
NOFO or authorized elsewhere in the Rule or any other regulations, HUD failed to comply with
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its own regulations governing the formation of CoC grant agreements and failed to observe procedure required by law.

184. Plaintiffs therefore ask the Court to declare under 5 U.S.C. § 706 and 28 U.S.C. §
2201 that imposing the CoC Funding Conditions violates the APA because it is contrary to
HUD's own regulations and thus not in accordance with law and without observance of
procedure required by law; provide preliminary relief under 5 U.S.C. § 705; and preliminarily
and permanently enjoin Defendants from imposing the CoC Funding Conditions without
complying with the APA.

Count 9: Administrative Procedure Act, 5 U.S.C. § 706(2)
Agency Action Without Procedure Required By Law
(All Funding Conditions)

185. Plaintiffs re-allege and incorporate the above as if set forth fully herein.

186. Under the APA, a “court shall . . . hold unlawful and set aside agency actions, findings, and conclusions found to be . . . without observance of procedure required by law.” 5 U.S.C. § 706(2)(D).

187. An agency “must abide by its own regulations.” *Fort Stewart Schs. v. Fed. Labor Rels. Auth.*, 495 U.S. 641, 654 (1990).

188. HUD has adopted regulations requiring it to proceed by notice-and-comment rulemaking including for “matters that relate to . . . grants.” 24 C.F.R. § 10.1 (“It is the policy of the Department of Housing and Urban Development to provide for public participation in rulemaking with respect to all HUD programs and functions, including matters that relate to public property, loans, grants, benefits, or contracts . . .”); 24 C.F.R. § 10.2 (definition of “rule”); 24 C.F.R. §§ 10.7–10.10 (notice-and-comment procedures); *Yesler Terrace Cnty. Council v. Cisneros*, 37 F.3d 442, 447, 448 (9th Cir. 1994).

1 189. The FTA is subject to notice-and-comment requirements for certain statements
 2 pertaining to grants issued under title 49, chapter 53 of the U.S. Code (including the FTA
 3 Grants). Specifically, “[t]he Administrator of the [FTA] shall follow applicable rulemaking
 4 procedures under section 553 of title 5 before the [FTA] issues a statement that imposes a
 5 binding obligation on recipients of Federal assistance under this chapter.” 49 U.S.C. §
 6 5334(k)(1). For this purpose, “binding obligation” means “a substantive policy statement, rule, or
 7 guidance document issued by the [FTA] that grants rights, imposes obligations, produces
 8 significant effects on private interests, or effects a significant change in existing policy.” *Id.*
 9 § 5334(k)(2).

10 190. The FTA has also adopted regulations requiring it to proceed by notice-and-
 11 comment rulemaking when it promulgates a substantive rule. *See* 49 C.F.R. § 601.22(a) (“Unless
 12 the Administrator, for good cause, finds a notice is impractical, unnecessary, or contrary to the
 13 public interest, and incorporates such a finding and a brief statement of the reasons for it in the
 14 rule, a notice of proposed rulemaking must be issued, and interested persons are invited to
 15 participate in the rulemaking proceedings involving rules under an Act.”); 49 C.F.R. §§ 601.24–
 16 601.28 (notice-and-comment procedures).

17 191. Through the CoC Funding Conditions, HUD has not just continued preexisting
 18 requirements to comply with nondiscrimination laws and the other types of conditions approved
 19 by and consistent with the relevant statutes and regulations, but also attached new conditions on
 20 CoC Grant Agreements that require grant recipients to comply with various Administration
 21 directives as a condition to receiving federal CoC funds. These new conditions thus comprise a
 22 substantive rule, not an interpretive rule or general statement of policy. *See, e.g., Yesler Terrace*
Cnty. Council, 37 F.3d at 449 (“Substantive rules . . . create rights, impose obligations, or effect

1 a change in existing law pursuant to authority delegated by Congress.”); *Erringer v. Thompson*,
 2 371 F.3d 625, 630 (9th Cir. 2004) (explaining that a rule is substantive, i.e., “legislative,” inter
 3 alia, if there is no “adequate legislative basis for enforcement action” without the rule, or if the
 4 rule “effectively amends a prior legislative rule”).

5 192. In imposing the CoC Funding Conditions, HUD failed to comply with the notice-
 6 and-comment requirements set forth in its own regulations, and thus failed to observe procedure
 7 required by law.

8 193. Through the FTA Funding Conditions, the FTA has not just continued preexisting
 9 requirements to comply with nondiscrimination laws and the other types of conditions approved
 10 by and consistent with the relevant statutes and regulations, but also attached new terms and
 11 conditions to FTA Grants that require grant recipients to comply with various Administration
 12 directives as a condition to receiving federal transit funds, which is a substantive policy
 13 statement, rule, or guidance document that imposes obligations or effects a significant change in
 14 existing policy, not an interpretive rule or a general statement of policy.

15 194. In imposing the FTA Funding Conditions, the FTA failed to comply with the
 16 notice-and-comment requirements set forth in 49 U.S.C. § 5334(k)(1) and its own regulations,
 17 and thus failed to observe procedure required by law.

18 195. Plaintiffs therefore ask the Court to declare under 5 U.S.C. § 706 and 28 U.S.C.
 19 § 2201 that imposing the CoC Funding Conditions and FTA Funding Conditions violates the
 20 APA because it is without observance of procedure required by law; provide preliminary relief
 21 under 5 U.S.C. § 705; and preliminary and permanently enjoin Defendants from imposing the
 22 CoC Funding Conditions or FTA Funding Conditions without complying with the APA.

VI. PRAYER FOR RELIEF

WHEREFORE, all Plaintiffs request the following relief:

- A. A declaration that the CoC Funding Conditions are unconstitutional, not authorized by statute, and otherwise unlawful;
 - B. A preliminary and permanent injunction enjoining HUD from (1) imposing or enforcing the CoC Funding Conditions or any materially similar terms or conditions to any CoC funds awarded to Plaintiffs or members of Plaintiffs' Continuums, or (2) taking any other action in furtherance of any withholding or conditioning of federal funds based on such terms or conditions; and

WHEREFORE, plaintiff King County requests the following additional further relief:

- C. A declaration that the FTA Funding Conditions are unconstitutional, not authorized by statute, and otherwise unlawful;
 - D. A preliminary and permanent injunction enjoining DOT and FTA from (1) imposing or enforcing the FTA Funding Conditions or any materially similar terms or conditions to any FTA funds awarded to King County, or (2) taking any other action in furtherance of any withholding or conditioning of federal funds based on such terms or conditions; and

WHEREFORE, all Plaintiffs request the following additional relief:

- E. Award Plaintiffs' reasonable costs and attorneys' fees; and
 - F. Grant any other further relief that the Court deems fit and proper.

1 DATED this 2nd day of May, 2025.

2 LEESA MANION
3 King County Prosecuting Attorney

4 /s/ David J. Hackett
5 David J. Hackett, WSBA #21234
General Counsel to Executive

6 /s/ Alison Holcomb
7 Alison Holcomb, WSBA #23303
Deputy General Counsel to Executive

8 /s/ Erin Overby
9 Erin Overbey, WSBA #21907
Senior Deputy Prosecuting Attorney

10 /s/ Cristy Craig
11 Cristy Craig, WSBA #27451
Senior Deputy Prosecuting Attorney

12 /s/ Donna Bond
13 Donna Bond, WSBA #36177
Senior Deputy Prosecuting Attorney

14 Chinook Building
15 401 5th Avenue, Suite 800
16 Seattle, WA 98104
17 (206) 477-9483
18 david.hackett@kingcounty.gov
aholcomb@kingcounty.gov
eroverbey@kingcounty.gov
cristy.craig@kingcounty.gov
donna.bond@kingcounty.gov

19
20
21 Attorneys for Plaintiff Martin Luther
22 King, Jr. County

23 PACIFICA LAW GROUP LLP

24 /s/ Paul J. Lawrence
25 Paul J. Lawrence, WSBA #13557

26 /s/ Jamie Lisagor
27 Jamie Lisagor, WSBA #39946

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PACIFICA LAW GROUP LLP
401 UNION STREET, SUITE 1600
SEATTLE, WASHINGTON 98101-2668
TELEPHONE: (206) 245-1700
FACSIMILE: (206) 245-1750

1 /s/ Sarah S. Washburn
2 Sarah S. Washburn, WSBA #44418

3 /s/ Meha Goyal
4 Meha Goyal, WSBA #56058

5 /s/ Luther Reed-Caulkins
6 Luther Reed-Caulkins, WSBA #62513
7 Special Deputy Prosecutors

8 PACIFICA LAW GROUP LLP
9 401 Union Street, Suite 1600
10 Seattle, WA 98101
11 T: 206-245-1700
12 F: 206-245-1750
13 Paul.Lawrence@PacificaLawGroup.com
14 Jamie.Lisagor@PacificaLawGroup.com
15 Sarah.Washburn@PacificaLawGroup.com
16 Meha.Goyal@PacificaLawGroup.com
17 Luther.Reed-Caulkins@PacificaLawGroup.com

18 *Attorneys for Plaintiffs Martin Luther King, Jr.
19 County and Pierce County*

20 JASON J. CUMMINGS
21 Snohomish County Prosecuting Attorney

22 /s/ Bridget E. Casey
23 Bridget E. Casey, WSBA #30459

24 /s/ Rebecca J. Guadamud
25 Rebecca J. Guadamud, WSBA #35588

26 /s/ Rebecca E. Wendling
27 Rebecca E. Wendling, WSBA #35887

28 Snohomish County Prosecuting Attorney's Office
29 3000 Rockefeller Avenue, M/S 504
30 Everett, WA 98201-4046
31 (425) 388-6392
32 Bridget.Casey@co.snohomish.wa.us
33 Rebecca.Guadamud@co.snohomish.wa.us
34 Rebecca.Wendling@co.snohomish.wa.us

35 *Attorneys for Plaintiff Snohomish County*

36 COMPLAINT FOR DECLARATORY
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PACIFICA LAW GROUP LLP
401 UNION STREET, SUITE 1600
SEATTLE, WASHINGTON 98101-2668
TELEPHONE: (206) 245-1700
FACSIMILE: (206) 245-1750

1 DAVID CHIU
2 San Francisco City Attorney
3

4 /s/ David Chiu
5 David Chiu (CA Bar No. 189542)*
6 *San Francisco City Attorney*
7 Yvonne R. Meré (CA Bar No. 175394)*
8 *Chief Deputy City Attorney*
9 Mollie M. Lee (CA Bar No. 251404)*
10 *Chief of Strategic Advocacy*
11 Sara J. Eisenberg (CA Bar No. 269303)*
12 *Chief of Complex and Affirmative Litigation*
13 Ronald H. Lee (CA Bar No. 238720)*
14 Alexander J. Holtzman (CA Bar No. 311813)*
15 *Deputy City Attorneys*
16 1390 Market Street, 7th Floor
17 San Francisco, CA 94102
18 (415) 554-4700
19 Cityattorney@sfcityatty.org
20 Yvonne.Mere@sfcityatty.org
21 Mollie.Lee@sfcityatty.org
22 Sara.Eisenberg@sfcityatty.org
23 Ronald.Lee@sfcityatty.org
24 Alexander.Holtzman@sfcityatty.org
25
26
27

28 *Attorneys for Plaintiff*
29 *City and County of San Francisco*
30

31 OFFICE OF THE COUNTY COUNSEL,
32 COUNTY OF SANTA CLARA
33

34 /s/ Tony LoPresti
35 Tony LoPresti (CA Bar No. 289269)*
36 *County Counsel*
37 Kavita Narayan (CA Bar No. 264191)*
38 *Chief Assistant County Counsel*
39 Meredith A. Johnson (CA Bar No. 291018)*
40 *Lead Deputy County Counsel*
41 Stefanie L. Wilson (CA Bar No. 314899)*
42 Cara H. Sandberg (CA Bar No. 291058)*
43 *Deputy County Counsels*
44 70 West Hedding Street
45 East Wing, 9th Floor
46
47

1 San José, CA 95110
2 (408) 299-9021
3 tony.lopresti@cco.sccgov.org
4 kavita.narayan@cco.sccgov.org
meredith.johnson@cco.sccgov.org
stefanie.wilson@cco.sccgov.org
cara.sandberg@cco.sccgov.org
5

6 *Attorneys for Plaintiff County of Santa Clara*

7
8 ADAM CEDERBAUM
9 Corporation Counsel, City of Boston

10 /s/ Samantha H. Fuchs
Samantha H. Fuchs (MA BBO No. 708216)*
11 *Senior Assistant Corporation Counsel*
Samuel B. Dinning (MA BBO No. 704304)*
12 *Senior Assistant Corporation Counsel*
One City Hall Square, Room 615
13 Boston, MA 02201
(617) 635-4034
14 samantha.fuchs@boston.gov
samuel.dinning@boston.gov
15

16 *Attorneys for Plaintiff City of Boston*

17 CITY OF COLUMBUS, DEPARTMENT OF LAW
18 ZACH KLEIN, CITY ATTORNEY

19 /s/ Richard N. Coglianese
Richard N. Coglianese (OH Bar No. 0066830)*
20 Assistant City Attorney
21 77 N. Front Street, 4th Floor
Columbus, Ohio 43215
(614) 645-0818 Phone
22 (614) 645-6949 Fax
23 rncoglianese@columbus.gov
24

25 *Attorney for Plaintiff City of Columbus*

1 PUBLIC RIGHTS PROJECT
2

3 /s/ Naomi Tsu
4 Naomi Tsu (OR Bar No. 242511)*
5 Sharanya (Sai) Mohan (CA Bar No. 350675)*
6 Public Rights Project
7 490 43rd Street, Unit #115
8 Oakland, CA 94609
9 (510) 738-6788
10 naomi@publicrightsproject.org
11 sai@publicrightsproject.org
12

13 *Co-Counsel for Plaintiff City of Columbus*

14 MURIEL GOODE-TRUFANT
15 Corporation Counsel of the City of New York

16 /s/ Doris Bernhardt
17 Doris Bernhardt (NY Bar No. 4449385)*
18 Joshua P. Rubin (NY Bar No. 2734051)*
19 Aatif Iqbal (NY Bar No. 5068515)*
20 *Assistant Corporation Counsels*
21 100 Church Street
22 New York, NY 10007
23 (212) 356-1000
24 dbernhar@law.nyc.gov
25 jrubin@law.nyc.gov
26 aiqbal@law.nyc.gov
27

28 *Attorneys for Plaintiff City of New York*

29 * *Pro Hac Vice application forthcoming*